

Amendment No. 1 to HB1362

Jernigan
Signature of Sponsor

AMEND Senate Bill No. 888*

House Bill No. 1362

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 30-4-101, is amended by deleting the section in its entirety and substituting the following:

This chapter is known and may be cited as "The Small Estate Affidavit Limited Letter of Authority Act."

SECTION 2. Tennessee Code Annotated, Section 30-4-103, is amended by deleting the section and substituting instead the following:

Whenever a decedent leaves a small estate, it may be administered in the following manner:

(1)

(A) After the expiration of forty-five (45) days from the date of decedent's death, as evidenced by the death certificate, provided no petition for the appointment of a personal representative of the decedent has been filed in that period of time and decedent's estate, one (1) or more of decedent's competent adult heirs or next of kin, or any creditor proving that creditor's debt on oath before the court, shall file with the clerk of the court an affidavit, along with a copy of the death certificate, which shall set forth the following:

(i) That the decedent left no will requiring administration by the court having probate jurisdiction in the county where the decedent was domiciled;

(ii) That the decedent had no interest in real property;

(iii) An itemized description and the value of all of decedent's personal property, the names and addresses of all persons known to have possession of any of decedent's personal property, including all insurance on decedent's life payable to the decedent's estate;

(iv) A list of unpaid debts left by decedent and the name and address of each creditor and the amount due that creditor;
and

(v) The name, address, relationship, and age, if a minor, of each heir entitled to receive any of decedent's personal property, all of whom the affiant must notify of the filing of the affidavit by mailing a copy to their last known address, postage prepaid;

(B) The form of the affidavit required by this section may be obtained from the clerk, if available, and must disclose that the affiant evidences by signature that, subject to the penalty for perjury:

(i) The affidavit is not false or misleading;

(ii) The affiant is not disqualified from serving because of having been sentenced to imprisonment in a penitentiary as set forth in § 40-20-115 or otherwise;

(iii) The affiant is willing to preserve all personal property of the decedent and cancel all insurance policies that are no longer applicable due to the decedent's death; and

(iv) That the affiant is mindful of all duties imposed upon the affiant by this chapter;

(C) No clerk or assistant shall be liable as a result of services rendered to the affiant in good faith in completing the affidavit based upon information furnished by the affiant;

(D) Upon the motion of one (1) or more of the decedent's competent adult heirs or next of kin, or upon its own motion, the court may, in its discretion for good cause shown, reduce the forty-five (45) day period required by subdivision (1)(A);

(E) A competent adult who is not an heir or next of kin of the deceased, is allowed to file for a small estate limited letter of authority by the court if:

(i) All competent adult heirs or next of kin consent in writing to the filing of the affidavit; and

(ii) The person who is filing the affidavit pursuant to this chapter complies with all other provisions of this section, including the bond provisions contained in subdivision (6);

(2) The court shall receive and file the original affidavit as a part of the court's permanent records, shall assign it a number and shall index it as other estates are indexed. The clerk shall deliver one (1) certified copy of the affidavit to the affiant onto which is affixed a clerk's stamp and seal certifying that the affidavit has been filed in the office of the probate court. Additional certified copies of the affidavit may be requested by the affiant at the time of filing the affidavit or any time prior to the affiant's discharge from liability as provided in subdivision (6). An affidavit may be amended to the extent that the aggregate amount does not exceed the statutory small estate limitation;

(3) The clerk shall charge and receive such fees for processing a small estate and additional certified copies as authorized and provided in §§ 8-21-401 and 32-1-112;

(4) The affiant shall make bond payable to the state for the benefit of those entitled with a corporate surety. The amount of the bond shall equal the value of the decedent's estate to be administered under this chapter. However, bond shall not be required of the affiant if:

(A) The affiant or affiants are the sole heirs of the decedent; or

(B) All adult heirs consent in writing;

(5) Formal letters testamentary or letters of administration shall not be issued nor any creditor be allowed to file a claim in a small estate proceeding;

(6) The affiant and the surety on the affiant's bond may be discharged from liability under the bond as follows:

(A) The court may enter an order discharging the affiant and the surety on the affiant's bond after the affiant files, for a decedent dying before January 1, 2016, either the tax receipt issued pursuant to § 67-8-420 or the certificate issued pursuant to § 67-8-409(f); or

(B) The affiant and the surety on the affiant's bond may wait until the first anniversary of the filing of the affidavit when the court shall automatically discharge them from liability. The small estate affidavit limited letter of authority shall remain open and active until the first anniversary to allow for amendments or conversions to the original affidavit limited letter of authority.

SECTION 3. Tennessee Code Annotated, Section 30-4-104, is amended by deleting the section and substituting instead the following:

(a) Every person indebted to decedent's estate, having possession of any personal property belonging to the estate, or acting as registrar or transfer agent of any shares of stock, bonds, notes, or other evidence of ownership, indebtedness, or right belonging to decedent's estate must be furnished with a copy of the affidavit by the affiant, duly certified by the clerk of the court. Upon receipt of the copy of affidavit and

demand of the affiant, each person furnished with a copy of the affidavit under this subsection (a) shall pay, transfer, and deliver to affiant:

(1) All indebtedness owing by the recipient; and

(2) Other property in possession of or subject to registration or transfer by the recipient.

(b) A person making payment, transfer, or delivery of personal property belonging to a decedent's estate to the affiant pursuant to this chapter is released and discharged from all further liability to the estate and its creditors to the same extent as if the payment, transfer, or delivery were made to the duly appointed, qualified, and acting personal representative of the decedent. The person making the payment, transfer, or delivery shall not be required to see to its application or to inquire into the truth or completeness of any statement in the affidavit.

(c) The decedent's personal property shall be distributed to the decedent's heirs as provided by law. The person to whom payment, transfer, or delivery of any personal property is made by the affiant shall be liable and remain liable, to the extent of the value of the personal property received, to unpaid creditors of the decedent, to anyone who had a prior right to the decedent's personal property, or to any personal representative of the decedent thereafter appointed. If distribution is made prior to payment of all medical assistance owed to TennCare under § 71-5-116, both the affiant and the person to whom payment, transfer, or delivery is made by the affiant shall be liable to TennCare and remain liable, to the extent of the value of the personal property received.

(d) If any person having possession of any of the decedent's personal property, upon receipt of a copy of the affidavit certified by the clerk, refuses to pay, transfer, or deliver the personal property to or at the direction of the affiant:

(1) The personal property may be recovered; or

(2)

(A) Transfer and delivery of the personal property may be compelled in an action brought in any court of competent jurisdiction for that purpose upon proof of the facts required to be stated in the affidavit; and

(B) Costs of the proceeding must be adjudged against the person wrongfully refusing to pay, transfer, or deliver the personal property.

(e) If during the administration of the small estate affidavit limited letter of authority, the affiant or a creditor of the decedent discovers additional assets that exceed the statutory small estate limitation, then the court may allow the small estate affidavit to be converted into probate administration by application of a verified petition pursuant to § 30-1-117 by the affiant or a creditor of the decedent to the court. The affiant is liable for the assets which may have been disposed of under the small estate affidavit limited letter of authority prior to the conversion.

SECTION 4. Tennessee Code Annotated, Section 8-21-401(c)(1), is amended by deleting the language "including giving notice of the opening of the estate to the department of revenue,".

SECTION 5. Tennessee Code Annotated, Section 8-21-401(c)(2), is amended by deleting the language "and giving notice of the opening of the estate to the department of revenue".

SECTION 6. This act shall take effect July 1, 2021, the public welfare requiring it.